



**Neil L. Postrygacz**

December 8, 2021

**VIA ECF**

The Honorable Valerie E. Caproni  
United States District Court  
Southern District of New York  
40 Foley Square, Room 240  
New York, NY 10007

***Re: SingularDTV GmbH v. LeBeau, et al  
1: 21-cv-10130***

Dear Judge Caproni,

On behalf of Defendants Zachary LeBeau and Kimberly Jackson undersigned counsel writes this letter in response to Plaintiff's second letter dated December 7, 2021. First, Plaintiff alleges in its second letter that Defendants are requesting an extension, which this Court already denied. This is simply not the case. Instead, Plaintiff suggests dates in December for Mr. Mraz to testify when the Court already notified counsel that the next available date for a hearing would be in January 2022. It would be impractical and prejudicial to have one witness testify next week and Plaintiff's next witness testify in January. This situation was created by Plaintiff by including declarations and choosing witnesses who cannot appear in person in the jurisdiction they chose.

Next, your undersigned did not think it was necessary to detail the advantages of having Plaintiff's witness testify in person. In response to Plaintiff's letter, the following is a summary of the disadvantages to remote testimony:

- the inability of counsel to have physical proximity to the witness. This physical proximity helps the cross examiner see the witness's facial expressions and body movement. This is harder to see virtually, and only the witness' head may be visible, which makes it so that you cannot see the witness' body language. The fact finder will have greater difficulty in assessing the credibility of the witness



- when a witness is appearing virtually, then are more relaxed because they are not in the court room. This makes it more difficult to trip up the witness or catch them lying or contradicting themselves.
- The lawyer cannot control what notes or visual aids are within the witness's reach when he is on camera.
- Technical glitches can affect the flow of questioning, which can give the witness more time to think than if the trial were in person.

Respectfully submitted,

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